

AMENDED IN SENATE APRIL 11, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 412

Introduced by Senator Vargas

February 16, 2011

An act to amend Section 580e of the Code of Civil Procedure, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 412, as amended, Vargas. Mortgages: deficiency judgments.

Existing law prohibits a deficiency judgment if real property or an estate for years has been sold by the mortgagee or trustee under power of sale in the mortgage or deed of trust. Existing law also prohibits a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for less than the remaining amount of the indebtedness due at the time of sale with the written consent of the holder of the first deed of trust or first mortgage, and provides that written consent of the holder of the first deed of trust or first mortgage to that sale obligates the holder to accept the sale proceeds as full payment and to fully discharge the remaining amount of the indebtedness on the first deed of trust or first mortgage.

This bill would delete the provisions regarding written consent of the holder of the deed of trust or mortgage obligating the holder to accept the sale proceeds as full payment, as described above. The bill would instead require that, following transfer of title by an instrument recorded in the county where the real property is located and the tender of the sale proceeds, as agreed, the rights, remedies, and obligations of the relevant parties pursuant to the instrument be treated and determined

as if the dwelling had been sold through foreclosure under a power of sale contained in the deed of trust or mortgage, as specified. The bill would except certain parties from the application of these provisions, including if the trustor or mortgagor is a limited liability company or partnership or if a public utility, as specified, made the mortgage or deed of trust. *The bill would make those provisions applicable to every holder of a deed of trust or mortgage rather than the holder of only the first deed of trust or first mortgage.* The bill would require that any waiver of these provisions is void and against public policy.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 580e of the Code of Civil Procedure is
2 amended to read:

3 580e. (a) No judgment shall be rendered for any deficiency
4 upon a note secured by a ~~first deed of trust or first deed of trust or~~
5 mortgage for a dwelling of not more than four units, in any case
6 in which the trustor or mortgagor sells the dwelling for a sale price
7 less than the remaining amount of the indebtedness outstanding at
8 the time of sale, in accordance with the written consent of the
9 holder of the ~~first deed of trust or first deed of trust or~~ mortgage.
10 Following the voluntary transfer of title to a buyer by grant deed
11 or by other document of conveyance recorded in the county where
12 all or part of the real property is located and the tender to the
13 mortgagee, beneficiary, or the agent of the mortgagee or beneficiary
14 of the sale proceeds, as agreed, the rights, remedies, and obligations
15 of any holder, beneficiary, mortgagee, trustor, mortgagor, obligor,
16 obligee, or guarantor of ~~such~~ the note, deed of trust, or mortgage,
17 and with respect to any other property that secures ~~such~~ the note,
18 shall be treated and determined as if ~~such~~ the dwelling had been
19 sold through foreclosure under a power of sale contained in the
20 deed of trust or mortgage for a price equal to the sale proceeds
21 received by the holder, in the manner contemplated by Section
22 580d.

23 (b) If the trustor or mortgagor commits either fraud with respect
24 to the sale of, or waste with respect to, the real property that secures
25 the ~~first deed of trust or first deed of trust or~~ mortgage, this section
26 shall not limit the ability of the holder of the ~~first deed of trust or~~

1 ~~first deed of trust or~~ mortgage to seek damages and use existing
2 rights and remedies against the trustor or mortgagor or any third
3 party for fraud or waste.

4 (c) This section shall not apply if the trustor or mortgagor is a
5 corporation, limited liability company, limited partnership, or
6 political subdivision of the state. This section shall also not apply
7 to any deed of trust, mortgage, or other lien given to secure the
8 payment of bonds or other evidence of indebtedness authorized or
9 permitted to be issued by the Commissioner of Corporations, or
10 which is made by a public utility subject to the Public Utilities Act
11 (Part 1 (commencing with Section 201) of Division 1 of the Public
12 Utilities Code).

13 (d) Any purported waiver of the provisions of subdivision (a)
14 by a person covered by this section shall be void and against public
15 policy.